IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :
THE HONOURABLE MR. JUSTICE R. BASANT

MONDAY, THE 5TH FEBRUARY 2007/ 16TH MAGHA 1928

Crl.MC.No. 271 of 2007()

LPC.23/2002 of JUDL.MAGISTRATE OF FIRST CLASS COURT-I, KANNUR
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PETITIONER: ACCUSED
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1. KOZHIPARAMBATH MUHAMMED,
S/O. ABDULLA, AGED 54 YEARS,
KOZHIPARAMBATH HOUSE, KAMBIL, KANNUR DISTRICT.

2. C.SURESHAN, S/O. KUNHIRAMAN,
KAZHUTHUMCHAL HOUSE, KANNADIPARAMBA AMSOM DESOM,
KANNUR DISTRICT.

BY ADV. SRI.C.K.SREEJITH

RESPONDENTS: COMPLAINANT
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1. STATE OF KERALA, REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. S.H.O.,
KANNUR TOWN POLICE STATION,
KANNUR.

BY PUBLIC PROSECUTOR SRI. S.U. NAZER

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 05/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.271 of 2007

Dated this the 5th day of February, 2007

ORDER

The 1st petitioner is the accused and the 2nd petitioner is the defacto complainant in a crime registered under Section 420 I.P.C as early as in 1990. Investigation was complete. Final report has been filed. The 1st petitioner/the accused has not entered appearance. The case against him has been transferred to the list of Long Pending Cases. The 1st petitioner/the accused has now settled the dispute with the 2nd petitioner/the defacto complainant. They want to report composition before the learned Magistrate. The 1st petitioner/the accused is employed abroad. He is unable to appear before the court personally. He wants to see the end of the prosecution against him. It is in these circumstances that the 1st petitioner/the accused and the 2nd petitioner/the defacto complainant have together come before this Court with a prayer that the offence allegedly committed by the accused may be permitted to be compounded and proceedings quashed invoking the powers under Section 482 Cr.P.C.

2. It is for the petitioners to appear before the learned Magistrate and report to the learned Magistrate the composition of the offence allegedly committed by the 1st petitioner against the 2nd petitioner. I have no reason to assume that the learned Magistrate

would not consider such application for composition expeditiously and on merits.

3. The learned counsel for the petitioners submits that since the 1st petitioner is not able to enter appearance personally, they apprehend that the learned Magistrate may not entertain the application for composition. A reading of Section 320 Cr.P.C clearly shows that composition can be a unilateral act by the persons mentioned in column 3. Except on exceptional reasons, it is not necessary to rigidly and ritualistically insist on personal appearance of the accused when the complainant compounds a compoundable offence under Section 320 Cr.P.C. I have no reason to assume that the learned Magistrate would unnecessarily and ritualistically insist on the personal presence of the 1st petitioner/accused. He can certainly appear before the learned Magistrate through counsel and the petitioners can seek acceptance of the composition after according the requisite leave under Section 320(2) Cr.P.C. In that event, the learned Magistrate must consider such request on merits and pass appropriate orders. The mere fact that the parties have compounded the offence and settled the dispute, is no reason by itself to justify invocation of the powers under Section 482 Cr.P.C. In the facts of this case, I am satisfied that the learned Magistrate must be directed to consider such application for composition and that is why I do not choose to invoke the powers under Section 482 Cr.P.C.

4. In the result, this Crl.M.C is, dismissed with the above observations.

(R.BASANT, JUDGE)

rtr/-